IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8676 OF 2003

Balasaheb Rambhau Zagade..... ... Petitioner.

Versus

Rohidas Rangnath Khetmalis & Ors..... Respondents.

Mr. Manoj Bhatt for the Petitioner.

Mr. A. M. Joshi for Respondent No.1.

Mr. M. H. Solkar for Respondent No.3.

CORAM : S. A. BOBDE, J.

DATED : 25TH APRIL, 2005.

P.C.:

Rule.

2. Learned Counsel appearing for respondent Nos. 1 and 3 waive service of Rule. By consent, Rule made returnable and heard forthwith.

3. On the oral request of the learned Counsel for the petitioner, leave to amend granted to the petitioner to correct the date of appointment.

4. The petitioner’s appointment as Head Master has been set aside on the ground that he superseded respondent No.1, Rohidas Rangnath Khetmalis. This is done for the reasons given in paragraph 7 of the order of the School Tribunal. The School Tribunal has considered the petitioner to be junior to respondent No.1 only because respondent No.1’s appointment as teacher was approved on 5th June, 1997 whereas petitioner’s appointment was approved with effect from 9th June, 1997. Clearly, this is a clear error of law apparent on the face of the record since the date of approval cannot determine seniority. The learned Counsel for respondent No.1 has not been in a position to demonstrate to the contrary.

5. Learned Counsel for the petitioner contended that his date of appointment in fact is much prior to 12th May, 1995 i.e. the date on which the respondent management treated both the petitioner and respondent No.1 as having been appointed. According to the petitioner, his date of appointment is 10th June, 1994. This issue is disputed by the learned Counsel for respondent No.1. It is not necessary for this court to go into this issue.Admittedly, the petitioner was absent before the Tribunal.

6. In the circumstances of the case and having regard to the error of law apparent on the face of the order, Rule is made absolute. The impugned order is quashed and set aside. Matter is remanded back to the School Tribunal for deciding afresh in accordance with law.

7. In the meanwhile, there is no dispute that the respondent No.1 has not taken charge of the post of Head Master. It is not necessary to disturb the status quo till the decision of the matter by the School Tribunal. The learned School Tribunal is directed to hear and dispose of the Appeal No. 68 of 2002 within a period of three months from the date the parties appear before it. Parties are directed to appear before the School Tribunal on 6th June, 2005.

8. Writ Petition is disposed of in the above terms. No order as to costs.

Sd/-

(S. A. BOBDE, J.)